

In the matter of:

*American Federation of State,
County & Municipal Employees*
Petitioner,

and

*University of Maryland
College Park*
Agency/Employer.

University of Maryland)
College Park)
Agency/Employer.)
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IT IS HEREBY ORDERED THAT:

A representation election shall be held for exempt employees of the University of Maryland College Park;

The election choices shall be AFSCME and No Exclusive Representative;

The election shall be held on Wednesday, Jan. 22, 2003 (snow date Jan. 29, 2003); the hours of in-person voting shall be 9:00 a.m. to 5:00 p.m.; provision shall be made for certain employees to vote by mail;

The election shall be held in the Stamp Student Union Grand Ball Room;

The election shall be conducted by secret ballot on paper and/or electronically;

RULES GOVERNING THE ELECTION

The election shall be conducted according to the rules set forth below; any conflict between the rules provided below and Title 3 the SPP, Section 3-101 – 3-602 and/or the Regulations of the Board, Section 14.30.01 – 11, rulings shall be decided by the statute and the regulations.

I. Date, time, method, and location of election and Withdrawal of Union Candidacy

A. The election for University Professionals United/AFSCME (UPU/AFSCME) or No Exclusive Representative shall take place by secret paper or electronic ballot as follows:

1. For employees who regularly work in the College Park immediate area voting shall occur on site in the Stamp Student Union Grand Ball Room on Wednesday, January 22, 2003 (snow date January 29, 2003) between the hours of 9:00 a.m. and 5:00 p.m..

2. Employees who do not work regularly in or are on assignment outside the immediate College Park or who are scheduled to be on leave on the date of the election and who have met application requirements specified below shall vote by ballots mailed to their homes and marked and returned to the SHELRB in the provided preaddressed and prestamped envelopes with all required information and received by the SHELRB no later than 5:00 p.m. Tuesday, January 21, 2003. An individual who mails in such a ballot may present him- or herself to vote in person, in which case the mailed-in ballot shall be marked VOID on the outside of the mailed envelope, and may then vote in the manner of other eligible voters in person.

B. Withdrawal of union candidacy shall be subject to the requirements as stipulated in the proposed Board regulation on candidacy withdrawal as finally adopted November 21, 2002 at its regular Board meeting and scheduled to become COMAR 14.30.05 (D):

1. Withdrawal Before Issuance of Final Order for Election. Where a request is received prior to the issuance of the order for election, the request shall be granted without prejudice to the subsequent filing of a new petition by the petitioner.

2. Withdrawal After Issuance of Final Order for Election (Prejudice Possible). Where, as in the present case, the petitioning organization is the sole employee organization involved, its request for withdrawal from the election after the issuance of the Final Order but before the holding of the election shall be approved with one-year prejudice and the election cancelled.

3. Prejudice Period

a. Good Cause. A withdrawal with prejudice shall carry the condition that it is granted with prejudice to the filing of a new petition encompassing the same or substantially the same unit of employees involved for a period of one (1) year, unless good cause is shown why the Board should entertain a new petition filed prior to the expiration date of the prejudice period. Prejudice runs only to the withdrawing candidate union and does not preclude petitions filed by other labor organizations.

b. Intervention During Prejudice Period. Even though a prejudiced employee organization may not file a petition during a given period in the absence of good cause, it may nevertheless intervene during the period in any petition filed by another employee organization and may participate to the extent of its showing of interest.

II. Notice, Sample Ballots, Balloting Methods, Voter Sign-In rules and procedures for the University of Maryland College Park exempt unit election

A. Final Election Order—the Executive Director shall send or deliver the final election order no later than December 11, 2002 to:

1. The petitioner (University Professionals United/AFSCME); and

2. The employer (UMCP)

B. The Board shall provide by mail a Notice of Election and Sample Ballot and such other information as it deems appropriate to each eligible employee of the exempt unit at UMCP using labels provided by the employer or using a third party mail house

1. Sample Ballots shall be a reasonable representation of the actual ballot to be used during the election;

2. Notice and Sample Ballot shall include information about the requirement that voters bring Photo ID with them to vote;

3. Notice and Sample Ballot shall include information banning the wearing or distribution of campaign paraphernalia within certain areas during the election period

C. Posting of Notice

1. The Notice of Election and Sample Ballot shall be posted in a public display case at the Maryland Higher Education Commission/SHELRB offices;

2. The employer shall post the Notice and the Sample Ballot at all work locations where notices are customarily posted for the benefit of employees;

a. the employer shall post the Notices and Sample Ballots no later than December 16, 2002;

b. the employer shall take reasonable precautions to ensure that posted notices of election and sample ballots shall not be altered, covered, defaced, or removed before the completion of the election

3. The Executive Director shall post this Order on the SHELRB website at www.mhec.state.md.us/shelrb.

D. Ballots

1. Electronic voting—the Executive Director shall approve the format of the ballot to be displayed on the Diebold electronic voting system, should that system be available for use by the Board for this election, and shall approve all instructions and related information to be displayed to eligible voters who vote in person at UMCP and shall keep the employer and the candidate union informed of these and all related developments in the use of the Diebold system;

a. Challenged voters shall not use the electronic system;

b. Individuals receiving mail-in ballots shall not use the electronic system except as provided above in the event of their appearing at the polling site to vote in person

2. The Executive Director shall prepare official paper ballots which shall be made available only

a. at the polling site to voters who have been challenged;

b. by mail to eligible voters who are not required to appear at the polling site in order to vote;

c. to all voters who appear at the polling site if the Diebold electronic system is not available for use

3. The Executive Director may adopt appropriate means to guarantee the authenticity of ballots used in the election

4. All eligible voters who seek to vote in person shall present a photo ID to verify their identities

5. Prior to the issuance of an electronic voting card or ballot,

a. Voter will sign name or make appropriate mark on the official eligible voter list held by the Board's election clerks;

b. Clerk will strike through voter name or otherwise clearly indicate that the voter has appeared;

c. Voter, once issued card or ballot, will be directed to an area to mark ballot in secret;

d. Voter will deposit ballot in ballot box or return voter card and immediately leave the designated polling area

6. Ballots shall contain the choices of, in order of appearance, AFSCME and No Exclusive Representative

7. Challenged and Void Ballots—see below

III. Voter Eligibility, Lists, Accessibility, and Confidentiality

A. Employees eligible to vote are those who

1. Meet the applicable requirements defining covered employees in the SPP § 3-102(b)(9);
2. Were employed by UMCP on the last day of the pay period ending prior to the issuance of this Order, which is November 30, 2002;
3. Are employed by UMCP as exempt unit employees on the date of the election. Eligible employees who have a reasonable expectation of continued employment shall be considered to be working on election day despite not being at work due to factors including but not limited to vacation, illness, leave of absence, or circumstances covered by the Federal Family and Medical Leave Act.
4. An eligible voter who expects to be on leave on the date of the election may request an absentee ballot. Such request to the Executive Director must be in writing and must be received by the Executive Director no later than 5 p.m. January 3, 2003.

B. Eligible voter lists

1. The employer shall make available, mail or e-mail an up-to-date eligible voter list as of November 30, 2002 for exempt unit employees to the Petitioner and the Executive Director ¹
2. The eligible voter list shall contain the following information for each employee in the unit who is eligible to vote:
 - a. full name, department, and job title;
 - b. work site address
3. The employer (UMCP) and the candidate union (UPU/AFSCME) are encouraged to meet in a timely manner prior to the election to discuss any questions regarding an employee's eligibility or excluded status in order to minimize challenges during the election

¹ The employer provided these lists to the SHELRB and UPU/AFSCME at the pre-Order meeting December 6, 2002

a. In the event, as a result of any such meetings and discussions, the eligibility list would be altered by agreement of both UMCP and AFSCME, a new updated list shall be provided to the Executive Director by 3:00 p.m. January 21, 2003, copied to the candidate union

b. Changes agreed to by UMCP and AFSCME would be clearly identified to the Executive Director in a separate list

C. Access—there shall be equal access for the candidate union and eligible employees on behalf of any ballot choice

1. AFSCME and eligible employees shall enjoy the right of reasonable access to college and university facilities, including grounds, rooms, bulletin boards, campus mail, and other common areas and forums for the purpose of conducting speech activities regardless of their position on any ballot choice

2. UMCP may not alter or revise existing speech access rules or practices for the campus community or general public in order to limit unfairly or prevent employees or AFSCME from organizing for collective bargaining

3. The employer may not discriminate against an employee's private speech in the workplace based on its labor-related content or viewpoint

4. While the Board encourages maximum participation by eligible employees in the election, each eligible employee has the absolute right to decide for him- or herself a position on the ballot choices or to decide not to participate and/or not to vote.

D. Confidentiality of employee addresses

1. Any direct mail to eligible unit voters by the Board, candidate union, or other employee group shall not compromise the confidentiality of employee home addresses;

2. UMCP shall make available to AFSCME at AFSCME's expense through a third party mail service two times during the campaign

period (from the issuance of the Order till the date of the election) a means for direct mail contact with eligible employees

a. any mailings using this means of contact must contain prominently the following statement:

By Order of the State Higher Education Labor Relations Board, the University of Maryland College Park has provided employee home addresses to a confidential mail facility. Your home address has not been provided to the union or to any other third party and will not be distributed or used except as provided in this Order. If you have any questions, call Karl Pence, SHELRB Executive Director, 410-260-3216.

3. UMCP may provide the Board with mailing addresses to employees eligible for voting by mail as otherwise provided for in this Order; any such addresses shall be kept in strict confidence by the Board.

IV. Conduct of the Election

A. The anonymity of ballots shall be maintained to the greatest extent possible.

B. Responsibility for the Election

1. The Executive Director on behalf of the Board shall be solely responsible for the conduct of the election; the polling site and immediate environs; voting materials, including ballots and leased electronic machines in cooperation with the State Board of Elections; and the counting of ballots, recording of results, and certification of the accuracy of the count, as attested to by UMCP and AFSCME; and certification of results of the election, subject to final Board approval

2. The Executive Director shall appoint himself or a qualified representative to be the Election Supervisor and assistant election supervisors and clerks as needed who shall perform the duties required for a fair and impartial election;

a. The Executive Director shall retain final responsibility to certify election results;

b. All decisions of the Election Supervisor, if other than the Executive Director, may be challenged and appealed to the Executive Director within five (5) working days of the election.

3. The UMCP as employer shall grant reasonable release time to employees so that they can vote during their workday or shift. Except in unusual circumstances, employees shall notify their supervisors when they are taking this time to vote—supervisors shall be involved only to ensure adequate coverage of University operations. The location of the polls shall be handicap-accessible. No employee shall be discouraged by any entity from going to the polling location and voting, nor shall any employee be forced by any entity to go to the polling place to vote. UMCP shall ensure that parking near the polling site is available to eligible voters and shall provide parking for Board staff.

4. The boundaries of the polling area shall be clearly designated and marked by the Election Supervisor as circumstances may require. For all practical purposes, the exterior of the Stamp Student Union Building shall be considered the boundary of the polling area.

a. No campaign literature, paraphernalia, or clothing shall be distributed or worn within the proscribed polling area during the period of voting;

b. The Board may set aside an election outcome favorable to a party who substantially violates the provisions of this Order.

5. Any eligible voter in line to vote at the close of the polling period shall be allowed to vote.

C. Election Observers

1. AFSCME and UMCP shall designate to the Executive Director in advance of the opening of the polls on the date of the election the names of persons who shall serve as observers during the election

a. each party may have one observer at any given time per clerical line which is a total of two

b. each party may have one observer at any given time to monitor the validation table and voting machine or ballot box areas in such a manner as not to compromise the privacy of the voting for a total of two persons at one time

c. each party may have one observer only during the tally period; said observer shall be the sole spokesperson for that party during the tally period and shall attest to the accuracy of the count on a form provided by the Board

d. observers may not campaign or converse with voters during their service nor in any way interfere with the voting process; any concerns must be directed to the Election Supervisor

e. exchange of observer lists must occur outside the polling area as approved by the Election Supervisor

f. observers may be eligible voters

g. observers, except the one serving during the tally period, may not have supervisory power over eligible exempt employees

h. any member of the Board may observe the voting at any time

D. Challenged and Void ballots and Ballot counting

1. Challenging of voters' right to cast ballots

a. any prospective voter may be challenged by an official observer for cause notwithstanding the efforts prior to the election of the parties to meet and resolve differences regarding employee eligibility

b. a prospective voter whose name is not on the approved and official eligibility list shall be challenged by the Board for the reason, "Not on the List"

c . a voter challenged for cause:

i. shall vote, place his or her ballot in a “secret ballot” envelope which is then deposited by the voter in a “challenged ballot envelope” containing information on the outside of the identity of the voter, the reason for the challenge, and the maker of the challenge; the outside may also contain markings related to the investigation of the validity of the challenge and resolution, if any

ii. the large challenged ballot envelope containing the unidentifiable white secret ballot envelope shall then be placed into the ballot box, preferably by the voter

2. Challenged ballots shall be considered at the conclusion of the regular tally only if the number of their total could affect the outcome of the election;

a. the total of ballots cast shall be considered initially to determine the highest tally required for a majority to be reached by a choice

b. if there are enough challenged ballots to affect the outcome, the Election Supervisor shall resolved the validity of the challenges if possible and may do so only to the point at which the remaining number is no longer determinative

3. Void ballots—the Election Supervisor shall determine a ballot void if the ballot does not reveal the intent of the voter due to mutilation, soiling, or any other reason

a. A void ballot shall not be counted as a ballot cast

b. A voter may request a replacement ballot for a mismarked one provided that the mismarked ballot has not been deposited in the ballot box and has been returned to the Election Supervisor who shall mark it “void” prominently; all voided ballots shall be kept separately in the election record

c. A ballot on which a voter has marked a name—presumably his or her own—shall be deemed to constitute a waiver of anonymity; other words or marks on a ballot shall not make the ballot void if otherwise the intent of the voter is clear; a question mark or other mark other than X or a checkmark within the appropriate box shall be construed as evidence of positive intent for that choice

4. Unchallenged Ballots shall be counted immediately the conclusion of the voting period and results shall be announced as soon as known by the Election Supervisor

a. In the event a large percentage of the ballots are cast on paper, the Executive Director may arrange with representatives of UMCP and UPU/AFSMCE to prepare the ballots for counting in advance of the closing of the polls;

b. Counting shall occur in plain view of the public;

c. Mail ballots received by the Board by 5:00 p.m. January 21, 2003 shall be counted with the onsite ballots; mailed-in ballots shall be opened and counted in such a way as to protect the anonymity of the voter to the greatest extent possible. Challenges to mailed-in ballots must be made prior to the opening of the outer envelope by the Election Supervisor. Furthermore, mailed-in ballots must conform as to verification information on the outside required by the instructions provided thereon by the Executive Director to include a signature of the voter.

d. Challenges and inspection of ballots shall be limited to official observers as specified below;

e. AFSCME and UMCP shall each designate one specific observer/representative to observe the tabulation and act on the party's behalf. Only one specified observer/representative may act during the counting period on behalf of the designating party.

f. The marking and thus crediting of a ballot as called by the Election Supervisor may be challenged. Any such ballot shall be set aside and its tally included as called, subject to later review.

2. All ballots, challenged or otherwise, and envelopes shall be retained by the Executive Director and archived by the SHELRB for as long as required by law or regulation. Parties' observers may be requested to sign across seals of balloting materials.

E. Determination of Election Outcome

1. Majority vote required—more than 50% of the valid ballots cast is required for AFSCME to be determined as winner of the representation election (e.g., 13 of 25)

2. Tie vote—the Executive Director shall certify “No Exclusive Representative” as winner if there is a tie vote

V. Report of Election and Certification of Representative

A. Within seven (7) days after an election, the Executive Director shall certify the results of that election. Prior to this certification, any announcement of results shall be deemed “unofficial.”

B. If AFSCME receives the majority of valid votes cast, it shall be certified by the Executive Director as the bargaining representative.

C. If “no exclusive representative” receives a majority, or if there is a tie, the Executive Director shall so certify.

D. The Executive Director shall report by mail the result of the election and the certification of the bargaining unit to the petitioner, AFSCME; the employer UMCP; and, the State Higher Education Labor Relations Board.

E. Objections to the conduct of Board agent.

Within seven (7) days after the election results are certified by the Executive Director, any party who objects to any action of the Executive

Director in conducting an election as having materially prejudiced the party and likely changed the outcome of the election, may request a hearing before the Board.

F. Objections to the conduct of a party.

1. Within seven (7) calendar days after election results are certified by the Executive Director, any party to the election who objects to prejudicial conduct of another party may file an objection with the Executive Director.

2. Activities of a party to an election which materially compromise the secret ballot process, effectively disenfranchise eligible voters, or otherwise substantially interfere with laboratory conditions of a free and fair election are grounds for such an objection.

3. The Executive Director may examine such an objection and render a decision. The Executive Director's decision may be appealed to the Board within seven calendar days of receipt of his decision. If the Board sustains any such objection, it may overturn the results of the election and order a new election.

**BY ORDER OF THE STATE HIGHER EDUCATION LABOR RELATIONS
BOARD**

A handwritten signature in cursive script, appearing to read "Karl K. Pence", written in black ink.

Karl K. Pence, Executive Director
Annapolis, MD

December 11, 2002

Maryland State Higher Education
Labor Relations Board

Notice of Election¹

It is hereby ordered that an election shall be held on the campus of the University of Maryland College Park to determine by secret ballot whether the Exempt employees of UMCP shall be represented exclusively for the purposes of collective bargaining by the union candidate, University Professionals United/AFSCME, or shall not be represented for the purposes of collective bargaining.

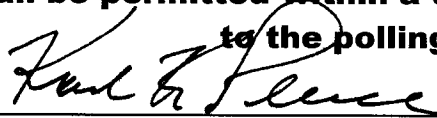
Date of Election: Wednesday, Jan. 22, 2003
(Snow date: Wednesday, Jan. 29, 2003)

**Location of Polling Place²: Stamp Student Union
Grand Ball Room**

Time of Election: 9:00 a.m. – 5:00 p.m.

Exempt unit employees who are eligible to vote must present a photo ID in order to receive a ballot at the polling site. No distribution or wearing of campaign literature for any ballot choice shall be permitted within a designated area in proximity to the polling site.

By:

 *Dec. 11, 2002*

Karl K. Pence, SHELRB Executive Director

¹ Complete copy of Final Order available on website: www.mhec.state.md.us/shelrb

² Certain employees who regularly work off campus will be notified of a vote-by-mail option.

University of Maryland College Park

Exempt Employees Unit

Vote for ONE of the Following

Mark X within the box to the left of your choice

**[] University Professionals United/
AFSCME**

[] No Exclusive Representative

**Eligible voters shall present a photo ID in order to
receive a ballot.**

This election is conducted under the authority of the State Higher Education
Labor Relations Board (SHELRB), Jamin B. Raskin, Chair.

Authority: State Personnel and Pensions Article, § 3-2A-05, Annotated Code of Maryland